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ILLINOIS STATE COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY)	
)	
Petition for expedited approval of implementation)	
of a market-based alternative tariff, to become)	Docket No. 00-0259
effective on or before May 1, 2000, pursuant to)	
Article IX and Section 16-112 of the Public)	
Utilities Act.)	

COMMONWEALTH EDISON COMPANY'S
BRIEF ON EXCEPTIONS

The Commission has the opportunity, by approving the proposed tariffs, to spur the ongoing evolution of a competitive market in the manner envisioned by the General Assembly. See 220 ILCS 5/16-101A; 220 ILCS 5/16-116(a). The Hearing Examiner's HEPO ("HEPO") correctly recognizes the serious concerns with the continued use of market values established through the neutral fact finder ("NFF") process in calculating transition charges ("CTCs") and Power Purchase Option ("PPO") prices. These concerns have been expressed during Chairman Mathias' January 13, 2000 roundtable discussion, in newspaper and trade press articles, in Docket 00-0007, and in this docket.¹ As ComEd's Petition points out, the market-index alternative Commonwealth Edison Company ("ComEd") proposes arose out of an

¹ See Report of Chairman's Roundtable Discussions Re: Implementation of the Electric Service Customer Choice and Rate Relief Law of 1997, March 30, 2000 at 15-22 ("All roundtable participants expressed the overwhelming opinion that the neutral fact finder (NFF) process is badly flawed and is a major impediment to the development of a competitive electric market in Illinois."); Steve Daniels, *A Jolt To Electric Deregulation*, Crain's Chicago Business, March 13, 2000 at 4; I.C.C. Docket No. 00-0007; Verified Comments of NewEnergy Midwest, L.L.C. to Commonwealth Edison Company's Petition for Expedited Approval of a Market-Based Alternative Tariff, April 18, 2000, at 2-3; Peoples Energy Services Corporation Comments In Support of Commonwealth Edison Company's Proposed Alternative Market Value Calculation Methodology, April 18, 2000, at 2; Ameren's Response to Questions, April 17, 2000, at 1; Nicor Affidavit in Support of Commonwealth Edison's Proposed Alternative Market Value Calculation Methodology, March 31, 2000, at 1.

extensive Staff-supervised workshop process and already reflects the constructive compromise such a process inherently entails. From the outset of the workshops, the parties discussed the question of whether a change could be made in time for this summer.² ComEd's proposal accomplishes that goal. Ultimately, the HEPO recognizes that a market-based approach to determining CTCs and PPO prices will be the most beneficial for the continued development of efficient and effective competition in northern Illinois.

Unfortunately, the HEPO nonetheless recommends altering ComEd's proposal in ways that are unworkable and counter-productive. These recommendations, to which ComEd takes exception, are as follows:

- The most serious error is the HEPO's failure to provide for the prompt phase-out of the NFF. The HEPO's requirement that ComEd simultaneously offer PPO prices and CTCs based on inconsistent market index and NFF methodologies would send improper and confusing price signals to customers and suppliers, delay efforts to transition to more accurate market-based prices, and stymie efficient and effective competition. No party supported this approach in its written comments. Maintaining two methods of determining market value is also inconsistent with Section 16-112 of the Public Utilities Act (the "Act"). ComEd cannot accept this approach and, if it were adopted, ComEd would not implement the market index tariffs. The phase-out of Rider PPO (NFF) as proposed by ComEd must be restored if the proposal is to be both beneficial to the market and acceptable to ComEd under Section 16-112(m) of the Act.
- The proposed market-index tariff should not automatically "sunset" in one year. The parties sought a market-index methodology to better align seasonal market values with actual market prices. RESs and utilities alike will wish to plan based upon the knowledge that they will have a real market-based price. Once a viable market-index process is established, why go back? While tariff improvements may or may not be required, that is no reason to provide for an "automatic" retreat to the NFF. See ComEd's Verified Response to Illinois Commerce Commission's Questions at 4. Although ComEd cannot agree to a sunset provision, it would agree to revise its Rider PPO(NFF) to provide that it will become available again to customers after the May 2001 billing period if Rider PPO (MI) is discontinued.
- The Commission should accept, not reject, the testimony of Staff that confirms the benefits of the market-index proposal. Staff is uniquely empowered by the Act to review competitively-sensitive confidential information. The fact that Staff exercised this special function is no grounds to reject the results of its analysis.

² Minutes of the Workshops, Summary of 2/23/00 Workshop, posted on The Commission website at 2.

- CMS and MidAmerican proposed improvements to the phase-in of the market-index. These changes were acceptable to ComEd, the only party who they could possibly harm, are customer-friendly, and are opposed by no party. The Commission should adopt them.

Each of these exceptions is discussed in detail below.

EXCEPTION 1: FAILURE TO CANCEL PPO (NFF) IS ANTICOMPETITIVE AND COUNTERPRODUCTIVE.

ComEd takes exception to the decision in the HEPO, outlined on pages 25 and 26, to keep the PPO-NFF and associated CTCs in effect even if the alternative market value methodology (PPO-MI) is approved. Failure to cancel the PPO (NFF) completely negates the primary purpose of the alternative market value methodology, which is to send better price signals and promote more efficient and effective competition. As explained more fully below, simultaneously utilizing both the PPO (NFF) and PPO (MI) will not promote the development of effective and efficient competition in Illinois and is fundamentally unfair as it forces ComEd to assume significant costs and unreasonable risks.

Simultaneous utilization of both the NFF-based and market-index based PPOs and CTCs would retard, not promote, the development of competition. Implementation of such a plan would increase the number of different offerings by ComEd against which retail providers must compete. While the increased number of offerings would make it easier for certain retail providers to profit by effectively reselling ComEd's tariffed services, it would be more difficult for those retail providers who directly supply customers to attract and retain customers over the long term. The reduced ability of retail providers to compete would result in lesser incentives for retail providers to enter and remain in the ComEd market, and limited potential customer savings over the long term. In addition, this approval would lead to increased customer confusion, and adversely affect the development of competition for the "Into ComEd" wholesale product that a

commitment to the market exchanges (e.g., Altrade™ and Bloomberg PowerMatch exchanges) would otherwise foster.

Under the approach adopted in the HEPO, a retail provider's success would not be based upon its ability to manage its supply portfolio efficiently, contain other costs, pass these savings on to customers, or market itself effectively; but rather upon the "gaming opportunities" provided to it. In the long run, this gaming would be done at the expense of customers who would not benefit from the opportunities afforded in an efficient marketplace, and utility shareholders who would be required to absorb the costs associated with such gaming. In addition, the simultaneous implementation of both PPO and NFF rates is administratively unworkable, and contrary to Section 16-112 of the Act.

For all of these reasons, the first and second full paragraphs on page 26 of the HEPO should be modified as set forth in Appendix A to eliminate PPO (NFF) as a concurrent

EXCEPTION 2: THE HEPO MISSTATES THE COMMISSION'S AUTHORITY TO SUBSEQUENTLY MODIFY THE TARIFF, AND THEREFORE LIMITS THE MARKET INDEX TARIFFS TO A ONE YEAR TERM.

The HEPO suggests on pages 23 through 25 that the Commission lacks future investigatory authority over any tariff approved herein and states that it is ComEd's position that the Commission is "precluded by statute from directing ComEd to modify the tariff in the future." These conclusions are incorrect. The Commission's authority to subsequently modify Rider PPO (MI) or order a return to PPO (NFF) is found in Article IX of the Act as modified by Section 16-112(m). The Commission retains the authority, when appropriate, to (i) investigate the tariff, (ii) propose (but not impose) modifications or (iii) order ComEd to discontinue its Rider PPO (MI) and make Rider PPO (NFF) available again.

ComEd has stated its commitment to file a report with the Commission at the end of the year evaluating the effect of implementation of its tariffs incorporating the alternative market value calculation methodology, and circulate such report to interested parties. If the Commission requires further assurances regarding the possibility of future modifications to this proposal, ComEd would suggest that in place of the one-year term stated in the HEPO, the Commission enter an interim order, directing ComEd to file its report, continue to participate in workshops to be scheduled by Staff beginning in the fall of 2000, and providing for a hearing, if required, on the continuation or modification of Rider PPO (MI) in February or March 2001 in order to allow for a final order by May 2001. ComEd would also be willing to revise its Rider PPO (NFF) to provide that it will become available again to customers after the May 2001 billing period if Rider PPO(MI) is discontinued.

Accordingly, the Section of the HEPO titled "Commission Conclusions" should be modified as set forth in Appendix A.

EXCEPTION 3: THE HEPO INAPPROPRIATELY REFUSES TO CONSIDER THE STAFF TESTIMONY.

The Staff in this proceeding did a detailed analysis of the proposed methodologies and concluded both that (i) the proposal provides a better opportunity, at least in the short-run, for the average customer to generate some savings by switching to delivery service" (Zuraski at 23) and (ii) the "Wholesale Offer" made by ComEd eliminates any incentive to bias or attempt to manipulate the market index (Christ at 5). The HEPO appears to reject Staff's entire analysis stating, on page 18 that "the Commission will not . . . give consideration to the Staff testimony in reaching the conclusions contained in this order unless there is a showing by ComEd that the information in question [confidential information reviewed by Staff] will be made immediately

available to other parties who want to see it upon signing a confidentiality agreement, or that the use of this information in the formulation of Staff's position while other parties are denied access to it is somehow appropriate." ComEd takes exception to this portion of the HEPO.

In this case, Staff performed a comprehensive analysis as soon as the Petition was filed, Staff asked for and received, pursuant to Section 5-108 of the Act, information including information that was highly confidential, proprietary and commercially sensitive. The only other party to conduct discovery prior to submitting its comments, IIEC, signed a confidentiality agreement and also received information. Staff alone, however, was given access to certain market data that is proprietary to the Altrade and Bloomberg exchanges, commercially sensitive, and which ComEd is not authorized to release, even under a confidentiality agreement, to other parties. This is data, which would be subject to Staff audit, but not public release, under the proposed tariff.

The Public Utilities Act has long given the Commission the right to seek information and conduct investigations, and to shield the data gathered from public disclosure. See 220 ILCS 5/4-101; 220 ILCS 5/5-108. When the Public Utilities Act was amended by the Electric Service Customer Choice and Rate Relief Law of 1997, the General Assembly included a provision directing the Commission to give adequate protection for confidential and proprietary information furnished, delivered or filed by any person, corporation or other entity. 220 ILCS 5/4-404. Case law regarding the entry of protective orders indicates that different types of parties can be denied access to various types of confidential and proprietary data. See, e.g., Greater Rockford Energy and Technology Corp. v. Shell Oil Co., 138 F.R.D. 530, 537 (C.D. Ill. 1991); Re Customer-Specific Offerings of Indiana Telephone Cos., 101 P.U.R.4th 517 (Ind. Utility Reg. Comm'n 1989). One of the elements considered is the party's access to the same or

similar data through other sources. Here the data at issue is commercially sensitive and proprietary to the Altrade and Bloomberg exchanges. At least one of the parties in this proceeding runs a competitive exchange,³ others are subscribers. As Staff witness Zuraski points out, those parties that are buyers and sellers of electricity have access to market data by which they could benchmark, or judge the accuracy of the ComEd proposed data sources (Zuraski Testimony at 19).

It is wrong to reject Staff's thorough investigation on the grounds used by the Hearing Examiner. ComEd is willing to share its own confidential data that was provided to Staff with those parties willing to sign a confidentiality agreement, but cannot violate its agreements with the exchanges by sharing their data. In all events, the HEPO provides no reason – nor could it – for failing to consider the majority of Staff's testimony that did not rely on confidential information. This testimony should thus be considered regardless of whether Staff properly relied on confidential data.

For these reasons, modifications should be made to Pages 17 and 18 of the HEPO as set forth in Appendix A.

EXCEPTION 4: THE MODIFICATIONS TO THE TRANSITION PROVISIONS PROPOSED BY CMS AND MEC PROVIDE GREATER FLEXIBILITY AND CHOICE TO CUSTOMERS AND SHOULD BE APPROVED.

As promised in its "Response to Comments on the Proposed Schedule," ComEd worked with both CMS Marketing and MidAmerican Energy Company to identify changes to its proposed transition provisions that would address concerns raised by these parties.

³ Objections and Verified Comments of Enron Energy Services Inc. (Revised), April 18, 2000, at 5-6.

CMS and MEC identified a transitional problem that some customers might experience because of the interplay of the 30-day notice required to go on the PPO and the fact that switching can only occur on meter reading dates. With their comments, these parties submitted revised transitional provisions that resolve their concerns. A review of these provisions shows that they benefit customers, make administration easier, and hurt no party.

Accordingly, ComEd takes exception to the HEPO's rejection on pages 18 and 19 of these modifications. Language accepting the proposed modification is set forth in Appendix A.

EXCEPTION 5: ADDITIONS TO "PROCEDURAL HISTORY" AND "COMMISSION CONCLUSIONS" TO REFLECT HISTORY OF THIS PROCEEDING AND OTHER CLARIFICATIONS.

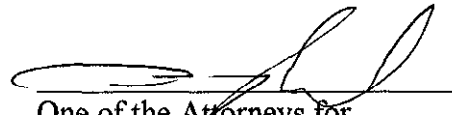
In Appendix A, ComEd has also proposed various changes that would strengthen an order approving the implementation of the market index methodology. These include: (i) additions be made to the portions of the HEPO titled "Procedural History" and "Commission Conclusions" to reflect the record evidence showing that this proceeding was not the starting point of the process of adopting an alternative market index methodology, but rather the continuation of a process begun by the Commission itself, (ii) language rejecting arguments raised by IIEC and the City of Chicago in their briefs which were reflected on pages 12 and 16 of the HEPO and (iii) the additions to the portion of the HEPO titled "Commission Conclusions" to reflect the record evidence rebutting arguments raised by IIEC and Enron that were based on speculation that ComEd might potentially be able to manipulate the markets.⁴ Accordingly, the

⁴ In particular, the record evidence shows that people are watching all of the markets on a daily basis looking for a pricing opportunity. This is called "arbitrage." If the bid/offer prices set by any party in the Into ComEd forwards market were not in line with market anticipations, then you would see parties respond to those bids/offers. The fact that ComEd – or any party – established reasonable bid/offer prices (i.e., prices that are not out of line with market expectations) that did not result in actual transactions can

first paragraph of page 1 and the first paragraph of page 23 should be modified as outlined in Appendix A.

WHEREFORE, ComEd respectfully requests that the HEPO be revised as set forth herein.

By:


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actually be used as evidence of the market index being an accurate reflection of the market place. Otherwise, a profit driven corporation would accept the bid or offer and take advantage of the opportunity for arbitrage. See Testimony of David Nichols at 6-8; Testimony of Richard Zuraski, Staff Exh. 1.1 at 1-3.

APPENDIX A

I. Changes to Exceptions 2, 4 and 5: "Commission Conclusions" and "Findings," Pages 22-27.

IV. Commission Conclusions

On March 31, 2000, ComEd filed a petition seeking an order approving the implementation of tariffs attached to its petition by April 27, less than twenty business days after the filing, with these tariffs to become effective May 1, 2000. These tariffs would incorporate a market index based methodology for purposes of determining market value under Section 16-112 of the Act. Edison developed its tariffs through a series of comprehensive workshops which were convened by and supervised by the Commission, to which all interested parties were invited, and in which most parties to this proceeding participated, on February 23, 2000, March 8, 2000, March 14, 2000 and March 16, 2000, to consider alternatives to the NFF methodology. In addition, a teleconference which allowed workshop participants to raise questions on a previously circulated draft of the tariffs was held on March 28, 2000. Among other things, the tariffs provide that peak market values would be determined using forwards transaction prices as listed on AltradeTM and Bloomberg PowerMatch, which Edison characterizes as two real time, online electronic trading exchanges which post forward market prices for the Into ComEd hub.

Numerous parties intervened in this proceeding. Some parties, such as PE Services and Nicor Energy, which are ARES, recommend approval of ComEd's proposal as filed. Others, such as IIEC and Enron, oppose the proposal; among other arguments, they claim the schedule in place in this docket does not allow sufficient time for a meaningful analysis of Edison's proposal. Other parties, such as MEC and CMS Marketing, support the proposal on the condition that certain modifications are made. Another party, NewEnergy, supports ComEd's proposed methodology, but not for periods beyond May, 2001. Some, but not all, of these parties actively participated in the Commission sponsored workshops that preceded and led to the filing of the Petition.

The petition was filed "pursuant to Article IX and Section 16-112" of the Act. Section 16-112 is entitled "Determination of Market Value." Section 16-112(a) provides in part, "The market value to be used in the calculation of transition charges . . . shall be determined in accordance with either (i) a tariff that has been filed by the electric utility . . . pursuant to Article IX of this Act and that provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy, or (ii) in the event no such tariff has been placed into effect . . . , or in the event such tariff does not establish market values for each of the years specified in the neutral fact finder [NFF] process described in subsections (b) through (h) of this Section, a tariff incorporating the market values resulting from the . . . NFF process set forth in subsections (b) through (h) of this Section."

Section 16-112(m) states, in part, "[t]he Commission may approve or reject, or propose modifications to, any tariff providing for the determination of market value that has been proposed by an electric utility pursuant to subsection (a) of this Section, but shall not have the power to otherwise order the electric utility to implement a modified tariff or to place into effect any tariff for the determination of market value other than one incorporating the neutral fact-finder procedure set forth in this Section." Normally, when the Commission approves a tariff it has the statutory authority to investigate and modify such tariff at a later date. This authority can be particularly important when a tariff is approved on less than 45 days' notice.

With regard to Article IX, which is entitled "Rates," the basic procedures for proposing changes in tariffs affecting rates, charges or practices relating thereto are set out in Section 9-201. Section 9-201(a) of the Act states in part, "[t]he Commission, for good cause shown, may allow changes [in any rate or other charge] without requiring the 45 days' notice provided for, by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published." The Commission notes that requests for "special permission" to modify a tariff on less than 45 days' notice are far from unheard of at the Commission. ~~However, as observed above, when the Commission approves a tariff it normally has the statutory authority to investigate and modify such tariff at a later date, and the Commission believes this authority can be particularly important when a tariff is approved on less than 45 days' notice.~~ The Commission finds, based on the record in this proceeding and subject to the proposed modifications discussed below, that there has been good cause shown to justify the Commission's expedited treatment of this matter.

The Commission notes that several parties object to the procedure by which ComEd has attempted to implement its proposal in this proceeding. ~~HEC, for example, appears to assert that 45 days' notice is always required under Section 9-201 of the Act. While the City acknowledges that 45 days' notice is not necessarily required, it contends that there has not been good cause shown to justify placing the proposed tariffs in effect on an expedited basis.~~ The Commission does not agree with these objections. The Commission notes in this regard that this proceeding was preceded by nearly a year of consideration of similar issues in three other dockets (I.C.C. Dkt. Nos. 98-0769, 99-0121 and 99-0134), including one to consider ComEd's last proposal, and a Commission-sponsored workshop process. Moreover, if ComEd's proposal were to be implemented for the summer of 2000, when many parties agreed it was necessary, an expedited schedule resulting in a May 1, 2000 order was required. The Commission further notes that the schedule adopted by the Commission and the Hearing Examiner is fully consistent with the requirements of Sections 16-112 and 9-201 of the Act, and with the requirements of the Administrative Procedure Act. Contrary to some parties' suggestions, neither Illinois law nor constitutional due process requires the Commission to hold a full-blown rate-case-type hearing, with several rounds of discovery, several rounds of briefs, and a trial-type evidentiary hearing, in every proceeding. Indeed, under Section 9-201 of the Act, the Commission could have permitted ComEd's rate to go into effect without any proceeding whatever. Under the unique circumstances of this case, we believe that the procedures adopted by the Hearing Examiner provided parties with an adequate opportunity to be heard and present their views and evidence. To the extent this issue is before the Commission, the Commission finds, based on the record in this proceeding and subject to the proposed modifications discussed below, that there has been good cause shown to justify the Commission's expedited treatment of this matter.

The Commission is fully aware of the shortcomings attributed to the NFF process. Unfortunately, while ComEd has developed a tariff that has the potential to provide significant benefits to some customers and suppliers, some parties have complained that the time frame proposed by ComEd has provided little time for scrutiny of this tariff by parties and by the Commission. Furthermore, if the tariff is approved as proposed, ComEd says the Commission is precluded by statute from directing ComEd to modify the tariff in the future. Although ComEd says it will provide reports and work with the parties on this issue, the Commission does not find these offers particularly reassuring or convincing in light of ComEd's statement that it is not waiving its right to reject future proposed modifications to Rider PPO-MI. In any event, ~~h~~Having reviewed the record in this case, the Commission thus finds that ComEd should be authorized to implement its proposed market index based tariff, subject to the modifications set forth below. Edison claims its The record indicates that ComEd's proposal is superior to the current NFF methodology for purposes of determining market value, in that it more accurately reflects activity in the relevant regional market, provides visible and current price signals, and enables better forecasting of future market values. Further, ComEd presented information intended to show that the increased market values using its proposed method will reduce annual transition charges and increase PPO prices over the summer months, as compared to the NFF approach, better aligning these charges with actual market data. In addition, several parties, including certified ARES, have indicated that ComEd's proposal has merit when compared to market values established using the NFF methodology.

The Commission finds that IIEC's concerns regarding timing and claims of "unjust enrichment" are unjustified as they ignore the fact that differing seasonal prices reflect the actual cost of energy in the market. By setting prices close to the summer months, ComEd's proposal allows for the most accurate prices as are reasonable to obtain. Moreover, customers have the ability to choose to take the PPO option, and accordingly can reject this option if they are unwilling to accept the inevitably higher summer pricing. Similar arguments made by the City also ignore the choices available to customers and the fact that overall CTCs will likely decrease under ComEd's proposal. Lower CTCs will make it easier for customers to choose alternate suppliers. As noted above, the changes proposed by MidAmerican and CMS Marketing improve the choices available to customers and are approved.

The Commission also finds that the concerns raised by Enron and IIEC regarding potential for manipulation are mitigated by the fact that the initial values are known, evidence that the liquidity of the Altrade™ and Bloomberg exchanges has been growing, the use of two exchanges, the opportunity for instant arbitrage for a number of participants, the wholesale offer which we approve of below, and the ongoing monitoring that we will require.

The Commission also notes that CILCO recommends a one-year sunset provision be included in the final order, and that NewEnergy does not support use of ComEd's proposed methodology for periods beyond May, 2001. While IIEC does not support implementation of the ComEd alternative to the NFF even if it were placed into effect for a defined period of time, IIEC says that under any circumstance, the tariff should only be in effect for a defined period of time not to exceed one year given the uncertainties associated with any approach.

Based on the information presented, the Commission believes it has been shown that ComEd's proposal would likely perform better in these above identified respects than does the NFF methodology. However, the Commission also believes there should be some means in place by which this proposal can be formally reviewed in the future, particularly considering the short review period in this case along with the substantive concerns expressed by other parties, such as IIEC's primary concern regarding the potential "thinness" of the market represented by Altrade and Bloomberg PowerMatch. The concerns raised by several parties regarding the ~~potential for manipulation and the unregulated nature of these internet-based markets~~ further support the Commission's conclusion that there should be an additional opportunity for the Commission to formally review the merits of ComEd's proposal after it has been in effect for a while, and then determine if it should be adopted continue on a long-term basis.

~~In order to mitigate the concerns of the parties and the Commission described above, the Commission is of the opinion that some modifications to ComEd's proposal would be appropriate. Before identifying the specific modifications, and in connection therewith, the Commission first notes, as explained above, that ComEd is also proposing various transitional provisions in both its tariffs and testimony. For example, under ComEd's proposal, customers will be given the choice to remain with charges that reflect the NFF methodology for the remainder of 2000 or move to those set using the market index methodology.~~

~~The Commission also notes that CILCO recommends a one-year sunset provision be included in the final order, and that NewEnergy does not support use of ComEd's proposed methodology for periods beyond May, 2001. While IIEC does not support implementation of the ComEd alternative to the NFF even if it were placed into effect for a defined period of time, IIEC says that under any circumstance, the tariff should only be in effect for a defined period of time not to exceed one year given the uncertainties associated with any approach.~~

~~With regard to the specifics of its proposed modifications to ComEd's proposed Rider PPO-MI, the Commission proposes that this tariff shall cease to be effective at the conclusion of the customer's May, 2001 billing period. The Commission proposes no other modification to this tariff. Subsequent to the entry of an order in this proceeding, ComEd may petition the Commission to extend the applicability of Rider PPO-MI, either in its existing form or some other form. As noted above, ComEd says the Commission is precluded by statute from ordering ComEd to modify any provision of Rider PPO-MI once it is approved. In light of the expedited schedule in this proceeding, and upon consideration of the record in this proceeding and the alleged lack of authority of the Commission to revisit this tariff, the Commission believes that approval of ComEd's proposal without such a modification would not be an appropriate result. This proposed modification will not eliminate any of the purported benefits which ComEd attributes to proposed Rider PPO-MI. In addition, any customer that does not benefit from Rider PPO-MI will have the option to utilize Rider PPO-NFF. If it wishes, ComEd may attempt to demonstrate that Rider PPO-MI should be adopted on a longer term basis in a proceeding with a less restrictive schedule that will provide the opportunity for a more comprehensive review of the proposal.~~

~~For purposes of implementing the ComEd proposal, as revised to reflect the Commission's proposed modifications found appropriate above, the Commission directs ComEd~~

~~to leave in place its existing Rider PPO-NFF, except as modified in the following manner: the paragraph on 1st Revised Sheet No. 149, which allows a customer to switch from Rider PPO-NFF to Rider PPO-MI, may be implemented by ComEd; further, this change may only be implemented if ComEd accepts the Commission's proposed modification to Rider PPO-MI. ComEd's other proposed modifications to existing Rider PPO-NFF, which would preclude customers from selecting that Rider in the future and cause it to have no effect after December 31, 2000, are rejected by the Commission and may not be implemented.~~

~~In the event that ComEd accepts the proposed modification to Rider PPO-MI, ComEd is directed to modify Rate CTC, Customer Transition Charge, to comply with that modification as well as the corresponding modification to Rider PPO-NFF that would result.~~

Accordingly, the Commission will enter an interim order approving the proposed tariff revisions with the modifications submitted by MidAmerican and CMS Marketing and the modification stated below at this time. The Commission directs ComEd to work with the Commission Staff to better define the report to be filed at the end of the year, and directs its Staff to schedule additional workshops on the operation and development of market index proposals to begin in the fall of 2000. A hearing, if necessary, on the market index tariffs approved herein, will be set by the Commission for early 2001 to allow for a final order by April 2001. Finally, the Commission will require ComEd to modify its proposed tariffs to provide that its Rider PPO (NFF) will again become available to customers following the May, 2001 billing periods if Rider PPO (MI) is no longer in effect at that time.

With regard to ComEd's so-called wholesale offer, ComEd also proposes, as explained more fully above, to offer to all retail electric suppliers serving retail load in ComEd's territory, for a limited time, a wholesale full-requirements service priced at the market values determined using the Commission-approved NFF and market-based methodologies. ComEd says this offer is proposed in order to satisfy certain concerns raised during the workshops, and that energy under this offer would be as firm as native load. According to ComEd, this offer is contingent upon a Commission finding that ComEd's offer in conjunction with its proposed alternative market-based methodology is just and reasonable and would promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers. Subject to the other determinations made in this order, the Commission hereby finds that ComEd's wholesale offer will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers.

V. Findings and Ordering Paragraphs

The Commission, having reviewed the record herein, is of the opinion and finds that:

- (1) ComEd is an Illinois corporation engaged in the business of furnishing electric service in the State of Illinois, and is a public utility as defined in Section 3-105 of the Public Utilities Act and an electric utility as defined in Section 16-102 of the Act;

- (2) the Commission has jurisdiction over ComEd and of the subject matter of this docket;
- (3) the statements of fact set forth in the prefatory portions of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) the testimony and exhibits admitted into the record support ComEd's alternative methodology for calculating market values and a finding that ComEd's offer of a wholesale requirements contract is just and reasonable and would promote the development of an effectively competitive electric market that operates efficiently and is equitable to all consumers;
- (5) ComEd's alternate methodology for calculating market values complies with the requirements of Section 16-112 of the Public Utilities Act;
- (6) ComEd is authorized to file tariffs which contain the Commission's proposed modifications as are described and found appropriate in the "Commission Conclusions" section of this Order above, with such tariffs to be effective May 1, 2000; absent such modifications, ComEd's proposal is rejected and the currently effective tariffs remain in place.

IT IS THEREFORE ORDERED by the Commission that ComEd is authorized to file tariffs consistent with the determinations and findings made in this Order, and containing the proposed modifications found appropriate in this Order, with such tariffs to be effective May 1, 2000; absent such modifications, ComEd's proposal in this docket is rejected and the currently effective tariffs remain in place.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.800, this Order is not final; it is not subject to the Administrative Review Law.

By proposed order of the Hearing Examiner this 21st day of April, 2000.

Hearing Examiner

II. Other Changes: Exceptions 3, 4 and 5

A. Exception 5: Procedural History, Page 1

Add the following sentences and make the revision in the first paragraph on Page 1 as follows:

In a petition filed on March 31, 2000, Commonwealth Edison Company ("Edison" or "ComEd") seeks an order under Article IX and Section 16-112 of the Public Utilities Act ("Act") approving the implementation of tariffs, to be effective May 1, 2000, incorporating an alternative "market

based" methodology which is intended to replace the "neutral fact finder" ("NFF") process currently in use. Edison's filing of this petition was a direct response to a series of comprehensive workshops which were convened by and supervised by the Commission, and to which all interested parties were invited and in which most parties to this proceeding participated, on February 23, 2000, March 8, 2000, March 14, 2000 and March 16, 2000, to consider alternatives to the NFF methodology. In addition, a teleconference which allowed workshop participants to raise questions on a previously circulated draft of this petition was held on March 28, 2000. Given the history of the discussions surrounding this petition, Edison says it wants such an order to be effective May 1, in part because May 1 is the first date of the June 2000 billing cycle under the tariffs to be implemented if its proposal is approved. The tariffs which Edison is proposing to make effective on May 1 are attached to the petition as Exhibit B. On April 3, 2000, notice of a prehearing conference for April 13, 2000 was served.

B. Staff's Position: Exception 3, Pages 17-18

Modify the following sentences from the last paragraph on Page 17 which continues on Page 18 as follows:

Generally speaking, Staff recommended that ComEd's petition be granted with certain modifications to ComEd's wholesale option. Staff concluded both that (i) the proposal provides a better opportunity, at least in the short-run, for the average customer to generate some savings by switching to delivery service" (Zuraski at 23) and (ii) the "Wholesale Offer" made by ComEd eliminates any incentive to bias or attempt to manipulate the market index (Christ at 5). It appears, however, that the bases for Staff's recommendations include data, designated as confidential by ComEd, that ComEd has made available only to Staff. Some of this confidential information is contained in redacted versions of Staff's testimony which other parties are not being permitted to see, and this information was relied upon by Staff in formulating recommendations which are adverse to some of these parties. Therefore, while the Commission appreciates the significant efforts of Staff members Zuraski and Christ, the Commission will not, for the reasons stated above, give consideration to the Staff testimony in reaching the conclusions contained in this order unless there is a showing by ComEd that the information in question will be made immediately available to other parties who want to see it upon signing a confidentiality agreement, or that the use of this information in the formulation of Staff's position while other parties are denied access to it is somehow appropriate. Staff further observed that "[t]here is certainly no guarantee that the benefits to average customers of the new MI will persist in future years . . . [A]s a well-known economist once said, 'In the long run, we are all dead.' In this case, in the 'long-run,' the transition period is just six years long. During the transition period, the transition charge can be an extremely effective tool for preventing entry into the market.

Waiting for the perfect market index alternative to NFF may mean waiting until the end of 2006.” (Zuraski at 23)

C. MEC’s and CMS Marketing Position: Exception 4, Pages 18-19

Delete sentences in the first full paragraph on Page 19 and add the following sentences as detailed below:

~~The Commission notes that the “negotiated agreements” between ComEd and these two parties have not been reviewed by the other parties to this proceeding and these other parties have had no opportunity to comment on the provisions of the “negotiated agreements.” In addition, the Commission notes that neither MEC nor CMS Marketing either explain what the proposed modification are or why the proposed modification should be adopted. As a result, the Commission rejects the proposed modification contained in the filings of MEC and CMS Marketing.~~ CMS and MEC identified a transitional problem that some customers might experience because of the interplay of the 30-day notice required to go on the PPO and the fact that switching can only occur on meter reading dates. With their comments, these parties submitted revised transitional provisions that are more customer-friendly than those initially proposed by ComEd. The Commission finds that these changes benefit customers, make administration easier, and hurt no party.

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY)

No. 00-0259

Petition for expedited approval of implementation)
of a market-based alternative tariff, to become)
effective on or before May 1, 2000,)
pursuant to Article IX and Section 16-112)
of the Public Utilities Act.)

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on this date we have forwarded for filing with the Clerk of the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62701, the original and eleven copies of the Brief on Exceptions of Commonwealth Edison Company in the above-captioned matter.

COMMONWEALTH EDISON COMPANY

By: Courtney Rosen
One of its Attorneys

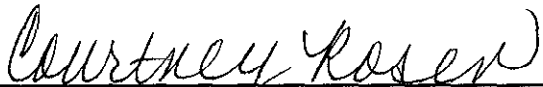
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CERTIFICATE OF SERVICE

I, Courtney A. Rosen, certify that I served copies of the attached Notice of Filing and the Brief on Exceptions of Commonwealth Edison Company, on each party on the attached service list by either electronic mail, facsimile, messenger, Federal Express or by depositing a copy in a properly addressed, sealed envelope with the U.S. Post Office, Chicago, Illinois, with proper postage prepaid on April 24, 2000.



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